



General Terms & Conditions of sales AJUSA

1. General

Our Terms and Conditions of Sales apply exclusively; general business terms and conditions of the buyer conflicting with or deviating from our Terms and Conditions of Sales are only recognized insofar as we expressly agreed to them in writing.

2. Offer, Confirmation or Agreement

2.1 These terms and conditions of commercial sale of AJUSA (the "Terms and Conditions") apply to and form an integral part of all quotations and offers made by AJUSA, all acceptances, acknowledgements and confirmations by AJUSA of any orders by Buyer and any agreements ("Agreement(s)") regarding the sale by AJUSA and purchase by Buyer of goods and services ("Products"), unless and to the extent AJUSA explicitly agrees otherwise in writing.

2.2 AJUSA offers are open for acceptance within the period stated by AJUSA in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by AJUSA at any time prior to the receipt by AJUSA of Buyer's acceptance thereof.

3. Conclusion of and Modifications to the Contract

3.1 Orders, contracts and order releases as well as modifications and supplements thereto must be placed and made in writing.

3.2 Oral agreements of any kind including subsequent modifications and supplements to our Terms and Conditions of Sales must be confirmed by us in writing to become effective.

4. Pricing

4.1 Prices in any offer, confirmation or Agreement are in Euros, based on delivery Ex-Works (INCOTERMS latest version) AJUSA manufacturing facility or other facility designated by AJUSA unless agreed otherwise in writing between Buyer and AJUSA and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products or any other expenses. AJUSA will add taxes, duties and similar levies to the sales price where AJUSA is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.

5. Payment

5.1 Unless agreed otherwise between AJUSA and Buyer in writing, AJUSA may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between AJUSA and Buyer in writing. All payments shall be made to the designated AJUSA address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by AJUSA. In addition to any other rights and remedies AJUSA may have under applicable law, interest will accrue on all late payments at the rate of ten percent (10%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.

5.2 All deliveries of Products agreed to by AJUSA shall at all times be subject to credit approval of AJUSA. If, in AJUSA' judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, AJUSA may require full or partial payment in advance or other payment terms as a condition to delivery, and AJUSA may suspend, delay or cancel any credit, delivery or any other performance by AJUSA.

5.3 In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, AJUSA shall have the right to refuse performance and/or delivery of any Products until payments are brought current and AJUSA may suspend, delay or cancel any credit, delivery or any other performance by AJUSA. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

6. Delivery & Quantities

6.1 Products shall be delivered Ex-Works (INCOTERMS latest version) as designated by AJUSA, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by AJUSA are approximate only, and AJUSA shall not be liable for, nor shall AJUSA be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. AJUSA agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

6.2 Buyer will give AJUSA written notice of failure to deliver and thirty (30) days within which to cure. If AJUSA does not deliver within such thirty (30) day period, Buyer's

sole and exclusive remedy is to cancel the affected and undelivered portions of the related Agreement.

6.3 Title in the Products shall pass to Buyer F.O.B. delivery. Until title in the Products has passed to Buyer, Buyer shall not assimilate, transfer or pledge any of the Products, or grant any right or title in the Products to any third party, except in the event such right or title is granted in normal course of business. Buyer shall ensure that the Products remain identifiable as Products obtained from AJUSA. Buyer shall at all times grant AJUSA (or its representative) free access to the location where Buyer has stored the Products.

6.4 In the event AJUSA' production is curtailed for force majeure, AJUSA shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be, without being responsible or liable to Buyer for any damage resulting therefrom.

7. Force Majeure

7.1 AJUSA shall not be liable for any failure or delay in performance if:

- Such failure or delay results from interruptions in the Product manufacturing process; or
- Such failure or delay is caused by Force Majeure as defined below and/or by (case) law.

7.2 In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without AJUSA being responsible or liable to Buyer for any damage resulting therefrom.

7.3 The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond AJUSA' reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which AJUSA cannot reasonably be required to execute its obligations including force majeure and/or default by one of AJUSA' suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by AJUSA to extend for a period of three (3) consecutive months), AJUSA shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

8. Right in Documentation and Intellectual Property

8.1 Subject to the provisions set forth herein, the sale by AJUSA of any goods implies the non-exclusive and non-transferable limited license to Buyer under any of AJUSA' intellectual property rights ("AJUSA' IPR") used in the goods to use and resell the goods as sold by AJUSA to Buyer.

8.2 To the extent that documentation is embedded in or delivered with any goods sold by AJUSA to Buyer, the sale of such goods shall not constitute the transfer of ownership rights or title in such software and/or documentation to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under AJUSA' IPR used in the software to use such software and/or documentation in conjunction with and as embedded in or delivered with the goods as supplied by AJUSA to Buyer.

8.3 Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as conferring any right, license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any AJUSA IPR or intellectual property rights of any third party other than explicitly granted under these Terms and Conditions.

9. Limited Warranty and Disclaimer

9.1 AJUSA warrants that under normal use in accordance with the applicable user manual the Products, (excluding any software that is not embedded in or delivered with any goods by AJUSA or software which is subject to copyright owned by a third party) shall, at the time of delivery to Buyer and for a period of twelve (12) months from the date of delivery (or such other period as may be agreed upon in writing by the parties, or as communicated in writing at sale by AJUSA), be free from defects in material or workmanship and shall substantially conform to AJUSA' specifications for such Product, or such other specifications as AJUSA has agreed to in writing, as applicable. Labor costs, (de)mounting and/or (de)installation are excluded from this warranty. AJUSA' sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at AJUSA' option, to (1) repair or (2) provide a replacement of the defective or non-conforming Product. AJUSA will have a reasonable time to repair, replace or credit. AJUSA is entitled at its option to replace the defective or non-conforming Product(s) with a product that has minor deviations in design and/or specifications not affecting the functionality of the agreed Product(s). The non-conforming or defective Products shall become AJUSA' property as soon as they have been replaced or credited.

9.2 Buyer may ship Products returned under warranty to AJUSA' designated facility only in conformance with AJUSA' then-current return material authorization policy with the specific application form. Buyer shall pay for returned Products



that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.

- 9.3 Notwithstanding the foregoing, AJUSA shall have no obligations under warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, use other than as set forth in the applicable user manual, neglect, improper installation or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.
- 9.4 Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states the entire liability of AJUSA in connection with defective or non-conforming Products supplied hereunder.

10. Limitation of Liability

- 10.1 AJUSA shall not be liable for any lost profit, lost saving, loss of reputation, loss of goodwill, indirect, incidental, punitive, especial or consequential damages arising out of or in connection with the agreement or the sale of any product or services by AJUSA or the use thereof whether or not such damages are based on tort, warranty, contract or any other legal theory. AJUSA aggregate and cumulative liability towards buyer under any agreement shall not exceed an amount of ten percent (10%) of the related agreement.
- 10.2 Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.
- 10.3 The limitations and exclusions set forth above in this Section 10 shall apply only to the extent permitted by applicable mandatory law.

11. Confidentiality

- 11.1 Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by AJUSA is the confidential information of AJUSA. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

12. Export and Import Controls.

- 12.1 Buyer understands that certain transactions of AJUSA are subject to export control laws and regulations. Any and all obligations of AJUSA to export, re-export or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to Export Regulations and will from time to time govern the license and delivery of Products abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, AJUSA may suspend its obligations and the Buyer's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, AJUSA may even terminate the relevant order in all cases without incurring any liability towards the Buyer or end-user.
- 12.2 Buyer warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Buyer. Buyer accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Buyer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Buyer shall indemnify AJUSA against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Buyer's or its customers' breach or non-compliance with this article.
- 12.3 Buyer acknowledges that the obligations contained in this Agreement shall survive the termination of any agreement of other arrangement under which the products, software or technology was provided to Buyer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between Buyer and AJUSA, Buyer understands that the terms of this Agreement shall control and be binding upon Buyer.

13. Assignment and Setoff

- 13.1 Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of AJUSA. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with AJUSA and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its

behalf.

14. Governing law and Forum

- 14.1 All offers, confirmations and Agreements are governed by and construed in accordance with the laws of Spain, without regard to its conflict of laws principles. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and AJUSA to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the courts of Albacete, Spain, provided that AJUSA shall always be permitted to bring any action or proceedings against.

15. Breach and Termination

- 15.1 Without prejudice to any rights or remedies AJUSA may have under the Agreement or at law, AJUSA may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:
- (a) Buyer violates or breaches any of the provisions of the Agreement;
 - (b) Any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or
 - (c) the control or ownership of Buyer changes.
- 15.2 Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.
- 15.3 In the event of cancellation, termination or expiration of an Agreement, the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

16. Miscellaneous

- 16.1 In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
- 16.2 The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.